



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

SR: CMM: SRL
USAO File # 2011V00253

*271 Cadman Plaza East-7th Floor
Brooklyn, N.Y. 11201*

February 25, 2011

VIA ECF W/OUT COURTESY COPY

The Honorable Steven M. Gold
Chief United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Enny Akinde and Kayode Adegoke v. United States of America, et al.*
No. 1:10-CV-5472-FB-SMG

Dear Chief Magistrate Judge Gold:

This office represents the United States of America ("United States") in connection with the above-referenced action.¹ In advance of the March 1, 2011 initial conference, the undersigned writes to provide the Court with a status report regarding the procedural posture of this matter, and to respectfully request that this Court adjourn the March 1, 2011 initial conference until such time as the defendants have been served with process and have answered, moved, or otherwise responded to the complaint pursuant to Fed. R. Civ. P. 12. This is the United States' first request for such an adjournment, and plaintiffs' counsel have graciously consented to this request.

By way of background, plaintiffs Enny Akinde and Kayode Adegoke ("Plaintiffs") filed the instant action on November 24, 2010, alleging tort claims against the United States pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq.* ("FTCA"), and constitutional claims against Agents Peachy and Sheraton, in their individual capacities, pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Specifically, Plaintiffs' claims relate to a September 17, 2007 arrest warrant execution during which Plaintiffs allege that they were assaulted, battered, falsely arrested, falsely imprisoned, and maliciously prosecuted by former United States Secret Service Special Agents Nathan Peachy and George Sheraton, as well as various NYPD officers. Plaintiffs have individually initiated separate lawsuits against the City of New York and the NYPD officers, styled *Akinde v. City of New York*, CV-10-2076-FB-SMG, and *Adegoke v. City of New York, et al.*, CV-10-5472-FB-SMG, and the docket sheet indicates that those cases will be conferenced concurrently with the instant matter.²

¹ This office has not yet been granted individual capacity representation authority to represent the individual defendants – former United States Secret Service Special Agents Nathan Peachy and George Sheraton.

² Counsel for the City of New York has also graciously consented to this adjournment request.

The undersigned is informed that, to date, Plaintiffs have not completed service on the United States pursuant to Fed. R. Civ. P. 4(i)(1)(B), as they have not yet sent a copy of the summons and complaint to the Attorney General in Washington, D.C. The undersigned is further informed that Plaintiffs have not yet effected service on either Peachy or Sheraton, pursuant to Fed. R. Civ. P. 4(i)(3).³ As such, the United States, Peachy, and Sheraton's (collectively the "Federal Defendants") time to answer, move or otherwise respond to the complaint has not yet begun to run. *See* Fed. R. Civ. P. 12(a)(2)-(3).

What is more, this office was only recently served with a copy of the summons and complaint, and has not yet received the information needed from the United States Secret Service for the undersigned to meaningfully respond to/discuss Plaintiffs' allegations at a conference with the court. The Federal Defendants are similarly not yet prepared at this time – nor are they obligated, absent completion of service – to make initial disclosures pursuant to Fed. R. Civ. P. 26(a). Additionally, as noted above, this office has not yet been granted authority to represent Peachy and Sheraton in connection with this matter.

Accordingly, the United States respectfully request that the Court adjourn the initial conference, currently scheduled to take place on March 1, 2011, until such time as the Federal Defendants have been served with process and have answered, moved, or otherwise responded to the complaint. This is the United States' first such request, and as noted above, both Plaintiffs' counsel as well as counsel for the City of New York have graciously consented to this request. To the extent the Court does not wish to adjourn the March 1, 2011 initial conference (given that the conference is being held concurrently with status conferences in *Akinde v. City of New York*, CV-10-2076-FB-SMG, and *Adegoke v. City of New York, et al.*, CV-10-5472-FB-SMG), the undersigned will gladly attend, but will not be in a position to discuss the substance of Plaintiffs' allegations and will not be able to enter an appearance on behalf of either Peachy or Sheraton.

We thank the Court for its time and consideration herein.

Respectfully submitted,

LORETTA E. LYNCH
United States Attorney

BY: /s/ Scott R. Landau
Scott R. Landau (SL 3778)
Assistant U.S. Attorney
(718) 254-7035
Scott.Landau@usdoj.gov

³ The undersigned is advised that Peachy is currently employed by the United States Department of Homeland Security, Immigrations and Customs Enforcement ("ICE") in Charlotte North Carolina, and that Sheraton is currently employed by the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF"). We are in the process of attempting to track down Peachy and Sheraton's current forwarding information.

cc: The Honorable Frederic Block (via ECF w/ courtesy copy)
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Christopher Wright, Esq. (via ECF)
Robert Marinelli, Esq.
305 Broadway, 14th Floor
New York, New York 10007

Qiana Charmaine Smith-Williams, Esq. (via e-mail)
New York City Law Department
100 Church Street
New York, NY 10007
qwilliam@law.nyc.gov